



17 MAR 2009

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

KENYON & KENYON LLP
ONE BROADWAY
NEW YORK NY 10004

In re Application of:	:	
SIMON, Stephen, et al.	:	
Application No.: 10/566,124	:	DECISION ON PETITION TO
PCT No.: PCT/DE2004/001478	:	WITHDRAW HOLDING OF
International Filing Date: 08 July 2004	:	ABANDONMENT
Priority Date: 25 July 2003	:	(37 CFR 1.181)
Atty Docket No.: 10191/4219	:	
For: DEVICE FOR CLASSIFYING AT	:	
LEAST ONE OBJECT IN THE	:	
SURROUNDING FILED OF A	:	
VEHICLE	:	

This decision is issued in response to the "Petition Under 37 CFR 1.181 to Withdraw Holding of Abandonment (Based on Failure to Receive Notification Of Missing Requirements Pursuant to MPEP 711.03(c)(I))" filed 08 January 2009. No petition fee is required.

BACKGROUND

On 08 July 2004, applicants filed international application PCT/DE2004/001478. The international application claimed a priority date of 25 July 2003, and it designated the United States. On 10 February 2005, the International Bureau (IB) communicated a copy of the international application to the United States patent and Trademark Office (USPTO). The deadline for submission of the basic national fee was thirty months from the priority date, i.e., 23 January 2006.

On 25 January 2006, applicants filed a Transmittal Letter for entry into the national stage in the United States accompanied by, among other materials, payment of the basic national fee, an English translation of the international application, and an unexecuted declaration.

On 25 February 2008, the United States Designated/Elected Office (DO/EO/US) mailed a "Notification Of Missing Requirements" (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497 and the surcharge for filing the oath or declaration later than thirty months after the priority date were required.

Applicants did not file a response to the Notification Of Missing Requirements during the extendable response period provided in the Notification Of Missing Requirements.

On 07 November 2008, the DO/EO/US mailed a "Notice of Abandonment" (Form PCT/DO/EO/909) indicating that the application was abandoned based on applicants' failure to file a timely response to the Notification Of Missing Requirements mailed 25 February 2008.

On 08 January 2009, applicants filed the "Petition Under 37 CFR 1.181 to Withdraw Holding of Abandonment (Based on Failure to Receive Notification Of Missing Requirements Pursuant to MPEP 711.03(c)(I))" considered herein. The petition asserts that applicants did not receive the Notification Of Missing Requirements upon which the abandonment is based and that the holding of abandonment should therefore be withdrawn.

DISCUSSION

Section 711.03(c)(I)(A) of the MPEP sets forth the requirements for a grantable petition in the present circumstances:

The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response.

Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required.

A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.

The present petition includes the required statements from the practitioner confirming that the Notification Of Missing Requirements was not received and that a search of the file jacket the file jacket and docket records indicates that the Notification Of Missing Requirements was not received.

With respect to the docket records requirement, applicants have provided a copy of the docket record for the present application file, as well as a mail log for the period following the mailing of the Notification and the docket listing for all responses due in the USPTO on 25 April 2008, the date on which a response to the Notification Of Missing Requirements was required. These materials, which contain no indication that the Notification Of Missing Requirements

mailed herein was received by applicants, satisfy the docket record requirement of a grantable petition.

Based on the above, applicants have satisfied the requirements for a grantable petition to confirm applicants' failure to receive the Notification Of Missing Requirements (Form PCT/DO/EO/905) mailed 25 February 2008.

It is noted that applicants' present petition was accompanied by an executed declaration and payment of the surcharge for filing the declaration later than thirty months after the priority date.

CONCLUSION

Applicants' petition under 37 CFR 1.181 for withdrawal of the holding of abandonment is **GRANTED**.

The Notification Of Abandonment (Form PCT/DO/909) mailed 07 November 2008, based as it was on applicants' failure to respond to the Notification Of Missing Requirements that applicants did not receive, is appropriately **VACATED**.

The application is being forwarded to the National Stage Processing Branch of the Office Of PCT Operations for further processing in accordance with this decision. The date under 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) is 08 January 2009.



Richard M. Ross
Attorney Advisor
Office of PCT Legal Administration
Telephone: (571) 272-3296
Facsimile: (571) 273-0419